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July 18, 2013

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Metropolitan Transportation Commission
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Re: Comments on Final Environmental Impact Report and Displacement Evidence

Dear Ms. Clevenger:

On behalf of Public Advocates, we respectfully submit the following comments on the Final Environmental Impact Report ("FEIR") for Plan Bay Area ("Plan"). We are also submitting evidence regarding the deleterious impacts of displacement on the environment and the community and the connections between housing and public health, which are attached hereto as Exhibits 1-7.

We submitted comments dated May 16, 2013 on the DEIR that also attached comments from Public Advocates on the Draft Plan,¹ including comments on the DEIR's discussion of displacement. In response to our concern about the lack of analysis of the environmental effects of economic displacement, ABAG and MTC erroneously dismissed our reference to ABAG's 2007-2014 Housing Needs Plan and stated that we provided no evidence to support our position on the effects of displacement. FEIR at 3.5-87-88. Our reliance on the referenced Housing Needs Plan, however, is well-placed because it describes precisely the types of environmental impacts that result from displacement. The agencies' response states that a quoted passage from the Housing Needs Plan refers to the effects of "in-commuting, not displacement," but in fact the passage discusses the adverse effects of *both* in-commuting and displacement. The report explains that a lack of housing has escalated Bay Area housing costs, pushing people to move (i.e. displacing people) to outlying areas and leading to negative impacts on health.² The report is thus relevant to the discussion of the harmful effects of economic displacement. The attached materials provide additional support regarding the environmental effects of displacement.³ As stated in our May 16 letter, CEQA requires analysis

¹ There are numerous comments in our May 16, 2013 letter, including, but not limited to, comments regarding the inadequacy of the EIR's project description, identification and analysis of alternatives, impact analysis and mitigation measures, that are not adequately responded to or addressed in the FEIR. This letter's focus on displacement issues should not be construed as a concession that those deficiencies have been corrected.

² ABAG, Housing Needs Plan, 2007-2014, p. 26.

³ See, e.g., Dominie, W. *Is Just Growth Smarter Growth?* Prepared for the Bus Riders Union, Los Angeles (Spring 2012), at 17 (noting that, "displacement can have significant environmental costs,

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of those effects. The analysis presented in the FEIR, however, is inadequate and incomplete. Although the FEIR admits that displacement could result from the Plan (FEIR at 3.1-29) and that localized displacement is a significant impact (DEIR at 2.3-36), the FEIR expressly and steadfastly avoids analysis of the "socio-economic causes of displacement" or "efforts to alleviate displacement pressure." FEIR at 3.2-29.

ABAG and MTC's response also stated that the negative socio-economic effects of displacement are "speculative." FEIR at 3.5-88. To the contrary, as stated in our May 16 comment letter, and as set forth in the attached literature, the adverse effects are well-established.⁴ Furthermore, the agencies' argument that "economic and social effects of proposed projects are outside CEQA's purview" is misplaced. CEQA Guidelines § 15131 and § 15064(e) describe situations in which social and economic factors must be considered. 14 CCR §§ 15131, 15064(e); see also *Anderson First Coalition v. City of Anderson*, 130 Cal. App. 4th 1173, 1182 (2005) (explaining that lead agencies are required to consider social and economic effects in certain circumstances). In this case, the FEIR should have considered the adverse social and economic impact of displacement on populations as a factor in assessing the significance of the Plan's effects. See 14 CCR § 15064(e) ("[I]f a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect."); see also Cal. Pub. Res Code § 21083(b)(3) (stating that the Guidelines "shall require a finding that a project may have a 'significant effect on the environment' if . . . [t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly").

In response to a detailed suggestion for mitigation of displacement in Public Advocates' letter, ABAG and MTC remarkably respond⁵ that we did not "raise any CEQA issue" and that "[n]o response is required." FEIR at 3.5-94. However, CEQA provides that agencies must

potentially negating the benefits of TOD. Indeed, the Northeastern report suggests that as transit station area neighborhoods have gentrified, they have seen decreases in low-income transit riders and influxes of new, wealthier residents—many of whom bring and use cars.").

⁴ See, e.g., Bhatia, R., and Guzman, C., *The Case For Housing Impacts Assessment: The Human Health and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practice*. PHES Technical Research Report, City and County of San Francisco: Department of Public Health (May 2004), at 5-11 (noting that "[r]esidential displacement or the permanent loss of area affordable housing can be expected to lead to diverse health effects," including increased psychological and physiological stress, poverty, job loss, overcrowding, homelessness, segregation, and demand for transportation systems and social services, as well as decreased housing safety, indoor air quality, social support, and social cohesion); Malekafzali, S. and Bergstrom, D. *Healthy Corridor for All: A Community Health Impact Assessment of Transit Oriented Development Policy in St. Paul, Minnesota*, Technical Report, PolicyLink (2011), at 61 ("Displacement can have several negative health outcomes, including increases in infectious disease, chronic disease, stress, and impeded child development...").

⁵ The manner in which ABAG and MTC have numbered comments and responses also suggests that the agencies inappropriately directed their "response" only to the introductory portion of Public Advocates' suggested mitigation, as the black line demarcating comment "B25a-5" stops before the comment even gets to the substance of the detailed mitigation that was suggested in the letter.

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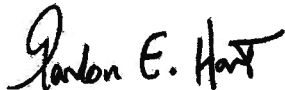
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propose and describe feasible mitigation measures to minimize significant impacts. Cal. Pub. Res. Code §§ 21002.1(a), 21100(b)(3); 14 CCR § 15126.4. Moreover, "[w]here several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified." 14 CCR § 15126.4(a)(1)(B). The FEIR, which identifies localized displacement as a significant impact, provides no corresponding discussion or evaluation of potentially feasible mitigation measures, including those suggested by Public Advocates. In fact, the only measures proposed to mitigate displacement in the FEIR are the same empty, unenforceable, improperly deferred, and ineffective measures that were originally proposed in the DEIR (e.g., "Implementing agencies . . . shall consider . . . [c]omplying with existing local regulations . . . that reduce long-term disruption and displacement"), notwithstanding the fact that we have pointed out, as have numerous other commenters, (see, e.g., comments B4-11, B10-10, B28-3, B32-4, and B46-5), that these measures are completely inadequate under CEQA. In contrast, the methods proposed by Public Advocates—for example, tying grant funding to anti-displacement policies—would provide real, enforceable and effective mitigation for the significant effect the EIR identified.

Instead of acknowledging Public Advocates' suggested mitigation or improving upon the inadequate measures proposed in the DEIR to mitigate displacement, it appears that ABAG and MTC have attempted to address the DEIR's shortcomings by describing "anti-displacement design" and "strategies to reduce displacement pressure," which ABAG and MTC regard as "key components of the Plan itself, and not simply mitigation measures for this EIR." FEIR at 3.1-32, 2-44. However, this is improper procedure under CEQA. CEQA provides substantive standards for mitigation measures, including, among others, the requirements that an EIR list all feasible measures available, discuss the environmental effects of the mitigation measures, include performance standards for deferred mitigation, distinguish between mitigation measures included in a project and those that could be required as conditions of project approval, and ensure mitigation measures are enforceable. 14 CCR § 15126.4. By relying on "strategies to reduce displacement pressure," but without evaluating such strategies (or those proposed by Public Advocates) in the manner required by CEQA, ABAG and MTC have failed to proceed in the manner required by law.

We appreciate your consideration of these comments.

Sincerely,



Gordon E. Hart
of PAUL HASTINGS LLP



Richard A. Marcantonio
PUBLIC ADVOCATES, INC.

Enclosures;

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1. Bhatia, R., and Guzman, C., *The Case For Housing Impacts Assessment: The Human Health and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practice*, PHES Technical Research Report, City and County of San Francisco: Department of Public Health (May 2004).
2. Dominie, W. *Is Just Growth Smarter Growth?*, Prepared for the Bus Riders Union, Los Angeles (Spring 2012).
3. Krieger, J., Higgins, D.L. *Housing and Health: Time Again for Public Health Action*. American Journal of Public Health, 92(5): 758-68 (May 2002).
4. Lees, L., *Gentrification and Social Mixing: Towards an Inclusive Urban Renaissance*, Urban Studies 45(12) (Nov. 2008): 2449-70.
5. Malekafzali, S. and Bergstrom, D. *Healthy Corridor for All: A Community Health Impact Assessment of Transit Oriented Development Policy in St. Paul, Minnesota*, Technical Report, PolicyLink (2011).
6. Pollack, C., Egerter, S., Sadegh-Nobari, T., Dekker M, and Braveman, P. *Where We Live Matters for our Health: The Links Between Housing and Health*, Robert Wood Johnson Foundation: Issue Brief No. 2 (Sept. 2008).
7. Schanzer, B., Dominguez, B., Shrout, P.E. and Caton C., *Homelessness, Health Status, and Health Care Use*, American Journal of Public Health, 97(3): 464-69 (Mar. 2007).

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